

The Legal Protection of House Ownership Credits

Bias Lintang Dialog, Gita Ayu Pramesti, Haris Budiman,
Dikha Anugrah and Suwari Akhmaddhian

Faculty of law, University of Kuningan, Kuningan, Indonesia
E-mail: lintangdialog@gmail.com

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Abstract : *The purpose of this study is to analyze the arrangement and the application of House Ownership Credits known as KPR based on the prevailing laws and regulations. This study employed a juridical-empirical approach. The juridical approach was used to analyze various laws and regulations. Meanwhile, the empirical approach was used to analyze the law which was viewed as a patterned community behavior in people's lives that continually interacts and relates to social aspects. Referring to the state regulation of public housing number 6 of 2011, the findings revealed the procurement of housing and settlements was supported by housing and financial aid in the form of housing subsidies through credits/home ownership financing. In addition, it is also required to submit a collateral in each application of a mortgage agreement with the bank. This collateral provides an assurance to the bank that the credit granted to the customers returns according to mutually agreed terms and minimizes the possible risk involved and arise in any credit disbursement. Meanwhile, in terms of providing credits to prospective debtors, the bank must have a confidence in the debtors' ability or capability to repay the loan. In conclusion, credit is a loan-borrowing agreement between the bank and the other party that requires the borrower to pay off his debt with the amount of interest, compensation or profit sharing within a certain period of time. Besides, in the implementation of legal aspects for credit applicants, a general home ownership credit applicant is an individual or human who is not a legal entity. Humans who are not legally incorporated are legal subjects. Thus, a credit analyst and an authorized officer who work in a credit unit must be able to fully understand the ins and outs of the credit applicant's legal aspects.*

Keywords: *House ownership credits, laws and regulations, legal protection*

Perlindungan Hukum dalam Kredit Pemilikan Rumah

Abstrak : Tujuan penelitian yaitu menganalisis Pengaturan dan Pelaksanaan Perjanjian Kredit Pemilikan Rumah (KPR) Berdasarkan Peraturan Perundang-Undangan. Metode Penelitian yang digunakan dalam penelitian ini adalah Pendekatan Yuridis Empiris. Pendekatan Yuridis digunakan untuk menganalisis berbagai peraturan perundang-undangan. Sedangkan pendekatan empiris digunakan untuk menganalisis hukum yang dilihat sebagai perilaku masyarakat yang berpola dalam kehidupan masyarakat yang selalu berinteraksi dan berhubungan dalam aspek kemasyarakatan. Hasil penelitian yaitu peraturan menteri negara perumahan rakyat nomor 6 tahun 2011 tentang perumahan rakyat menyebutkan bahwa pengadaan perumahan dan pemukiman dengan dukungan bantuan pembiayaan perumahan dalam bentuk subsidi perumahan melalui kredit/pembiayaan pemilikan rumah. Setiap pelaksanaan perjanjian kredit pemilikan rumah pada bank, disyaratkan untuk menyerahkan jaminan. Fungsi jaminan ini adalah untuk memberikan keyakinan kepada bank bahwa kredit yang diberikan kepada nasabah dapat diterima kembali sesuai dengan syarat-syarat yang telah disepakati bersama, dan itu juga untuk meminimalisir resiko yang terkandung dan senantiasa dimungkinkan dapat timbul dalam setiap pelepasan kredit. Berkaitan dengan pemberian kredit kepada calon debitur, maka pihak bank harus mempunyai keyakinan atas kemampuan atau kesanggupan pengembalian pinjaman kredit oleh debitur. Simpulan bahwa kredit adalah persetujuan atau kesepakatan pinjam-meminjam antara bank dan pihak lain yang mewajibkan peminjam untuk melunasi utangnya setelah jangka waktu tertentu dengan jumlah bunga, imbalan atau pembagian hasil keuntungan. Pelaksanaannya aspek hukum bagi pemohon-pemohon kredit. Pada umumnya pemohon kredit pemilikan rumah adalah perorangan atau manusia dan tidak berbadan hukum. Manusia yang tidak berbadan hukum adalah subyek hukum. Seorang analisis kredit dan pejabat yang bertugas di unit kerja perkreditan harus mampu memahami seluk beluk aspek-aspek hukum pemohon kredit.

Kata Kunci: Kredit kepemilikan rumah, hukum dan peraturan, perlindungan hukum

INTRODUCTION

A house is a basic necessity for human life but owning a house is not easy. Many people specifically a low economy society find it hard to afford a house because its price keeps soaring. From year to year, the population growth in Indonesia is continually increasing. Thus, the society needs for service provision is also rising. The increasing number of population will also rise the society's need for a place to live.¹ In the provisions of Article 1 of the State Ministry Regulation for public housing Number 6 of 2011, Procurement of Housing and Settlements is supported by Financial aid in the form of housing subsidies through credits/home ownership financing. The houses built by entrepreneurs in a specific area are sold in cash and credit.

The existence of House Ownership Credits known as KPR is highly needed by a low income community. KPR is seen as an alternative to help people afford their own desire and dream house. KPR is one of the products issued by banking institution to help people own new build or second-hand homes. This so-called KPR helps the society realizing their own desire assets based on their average income.² From year to year, the total population keeps increasing without the balanced number of house ownership. The house ownership problems which were complained by Indonesian citizen is simplified with the Banks by financing the purchase of a house with the House Ownership Credit system. The debtor can own a house by providing a down payment and paying a long-term installment agreement accompanied by an increase expectation on the debtor's income in the future.³ In fact, the rapid growth of KPR housing in creates unhealthy business competition among housing developers. The problem that usually arises due to the unfair competition between developers is the developers try to market their housing without considering the build house's quality and legality. They even offer a low or no down payment. Many developers manage the housing construction without preceding the licensing process, the site plan prepared is not in line with the provisions on the applicable laws and others.⁴

Based on the Law of the Republic of Indonesia Number 10 of 1998, Banking, it can be concluded that banking business covers three activities namely raising funds, channeling funds, and providing other bank services. KPR house can be interpreted as a form of credit which is given to the public or consumers who need materials such as boards that are used for personal needs in the community, not for commercial purposes and do not have any additional goods and services in the community. In principle, any agreement must be followed by fulfilling the obligation between one party reciprocally. In other words, the first party must fulfill the obligation reciprocally giving the right to the achievement.⁵ The agreement is a legal relationship, the right of the person concerned is guaranteed by law or statute. Sale and purchase is a reciprocal agreement in which one party (the seller) promises to give up the the property rights to an item. Meanwhile, the other party (the buyer) promises to pay a price consisting an amount of money in exchange of the property right acquisition. A person or agency which gives a credit believes that receiving credit in the future will be helpful to fulfill everything that was promised. It can be in the form of goods, money, or services.

¹ Tanto, *Perancangan Sistem Pendukung Keputusan Pemberian Kredit Pemilikan Rumah (KPR Dengan Metode Simple Additive Weighting)*, Jurnal Tectum LPPM Universitas Asahan Edition Vol. 1, No. 1 November 2019, page 42.

² Alfia Qorizah dan Prayudi Setiawan Prabowo, 2019, *Jurnal Ekonomi Islam* Volume 2, Number 2, page 149-161.

³ Rr. Anggraini Puspa Dewi, 2016, *Analisis Permintaan Kredit Pemilikan Rumah*, Universitas Brawijaya Malang.

⁴ Zulfy Azhar dan Masitah Handayani, 2018, *Analisis Pemilihan Perumahan Kpr Menggunakan Metode Ahp*, Seminar Nasional Royal (SENAR).

⁵ Lamhot Togu Balperik, Bahmid, dan, Irda Pratiwi, *Pengaturan Hukum Perjanjian Serta Akibat Hukum Dari Kredit Rumah Kredit Pemilikan Rumah (KPR)*, Jurnal Tectum LPPM Universitas Asahan Edition Vol. 1, No. 1 November 2019, page 56.

The granted credit by the bank to the customer is to pay for the purchase of a house. This made according to the trust and confidence that the customer who receives credit is able and willing to return the credit he has received. From these abilities and willingness factors, it is concluded the security condition and credit profit are both interrelated. Security refers to the given performance is absolutely returned guaranteed in the form of money, goods, or services. Thus, the expected profit becomes a reality. Profits are the purpose of credit which are manifested in the form of interest received. In fact, in today's reality, there are many house ownership credit buyers who have not fully carried out their determined obligation by the bank such as returning and repaying in an installment of an obtained credit by the buyers⁶. The negligence committed by the credit buyers will be detrimental to the bank in expanding its business to provide mortgage loans to other prospective buyers. Moreover, there will be an obstruction for the bank to participate in the implementation of the government program in creating simple housing facilities or for the middle to lower economic class. Based on this description, it can be seen that the problem of granting credit in purchasing a house requires legal protection for the parties involved.⁷ The parties can get legal protection after getting involved in the buying and selling credits agreement known as a sale and purchase agreement. Therefore, the researchers are interested in making the title of the Legal Protection of House Ownership Credits Based on the Ministerial Regulation Number 6 of 2011 on the Public Housing. The main issues and focuses that will be discussed in this paper are How to arrange the House Ownership Credit Agreement (KPR) based on the legislation? And how is the implementation of the House Ownership Credit Agreement (KPR) based on Ministerial Regulation Number 6 of 2011 on the Public Housing?

RESEARCH METHODS

Based on the problems investigated by the researchers, this study employed a juridical-empirical approach. The juridical approach was used to analyze various laws and regulations. Meanwhile, the empirical approach was used to analyze the law which was viewed as a patterned community behavior in people's lives that continually interacts and relates to social aspects.

RESULTS AND DISCUSSION

1. What kind of steps taken by the government to realize the Citarum Harum River?

A. The Arrangement of House Ownership Credit Agreement (KPR)

The regulation of credit in Indonesia is based on the banking law provisions. The definition of credit is found in the provisions of article 1 number 11, Republic of Indonesia Law number 7 of 1992 on banking as amended by law number 10 of 1998 (hereinafter referred as the banking law), as follows:

"Credit is the provision of money or an equivalent claim based on KUH agreement between the bank and another party which which obliges the borrower to pay off the debt with an interest within a certain period of time."

Several provisions stated in the Ministerial Regulation Number 6 of 2011 on the procurement of housing and settlements with the support of housing and financial aid in the form of housing subsidies through credits/home ownership financing, consist of:

⁶ Nikmah Mentari and Franciska Mifanyira Sutikno "Sustainable Development Goals (SDGs) Principle Towards Sharia Business Unit Pre- Spin Off 2023" *Unifikasi : Jurnal Ilmu Hukum*.6(2).2019.199-208

⁷ Teguh Prasrtyo, Rizky P.P Karo Karo, Vena Pricilia and Natasha Setiadinata. "The Urgency of Law Establishment Regarding Block-Chain Technology in Indonesia Based on the Perspective of Dignified Justice (Keadilan Bermartabat)". *Unifikasi : Jurnal Ilmu Hukum*.6(2).2019.177-198

1. The submission request for subsidies payment of subsidized KPR and subsidized Syariah KPR shall be submitted to the Commitment-Making Officer (PPK) of the working unit from public housing.
2. The subsidy payment of KPR as stated in paragraph (1) shall be paid under a difference interest subsidy scheme or a down payment subsidy.
3. The difference payment of subsidies interest for subsidized KPR credit agreement issued before 2010 will be paid annually or paid at once preceded by reconciliation.
4. The difference payment of subsidies interest for subsidized KPR credit agreement issued in 2010 will be paid annually or paid at once.
5. Further provisions in regards to the application procedures of subsidized KPR and subsidized Syariah KPR shall be regulated based on the ministerial regulation.

In connection with the above-mentioned credit definition, based on the provisions of Article 1 point 5 of Bank Indonesia Regulation No. 72 / PBI / 2005 on the assessment of commercial bank asset quality. The credit refers to the provision of money or an equivalent claim based on a loan agreement between the bank and another party. This requires the borrower to repay the debt after a period of time and with certain interest costs include: (a) overdrafts, negative balances of customer demand deposits that cannot be fully paid at the end of the day; (b) take over the bills of factoring invoice; and (c) credit acquisition or purchase from other parties.⁸

The banking business provides a credit based on the bank business that is specifically engaged in financial services. Pursuant to Article 6 and Article 17 of the Banking Law, Banks have special business activities, as follows:

1. Collecting funds from the public in the form of savings such as giro, time deposits, deposits, savings and/or equivalent
2. Providing credit.
3. Conducting foreign exchange activities based on the provisions stipulated by Bank Indonesia.
4. Thus, it can be concluded that credit is a loan agreement between a bank and another party.

This requires the borrower to pay off his debt after a certain period of time with the amount of interest, compensation or profit sharing.⁹ Referring to the aforementioned definition of credit, the elements of credits are obtained as follows:

1. Credit has a special meaning known as lending money.
2. Special money providers/lenders exist in the banking world.
3. The loan agreement sets as a reference for the credit agreement.
4. Within a certain period.
5. The borrower has an achievement to repay the debt with an amount of interest or compensation. For bank Syariah or Bank Muamalat, the debt repayment is accompanied by a reward or profit-sharing not an interest.¹⁰

Meanwhile, according to Munir Fuad, the juridical elements of a credit covered:

1. An agreement between the debtor and the creditor known as a credit agreement.
2. The parties, namely the creditor and the debtor.
3. The ability or promise to pay debts.
4. The existence of a loan, giving a certain amount of money.
5. The time difference between the provision of credit and credit payments.¹¹

⁸ Anton Suyatno. *Kepastian Hukum Dalam Penyelesaian Kredit Macet Melalui Eksekusi Jaminan Hak Tanggungan Tanpa Proses Gugatan Pengadilan*, Prenadamedia Group, Jakarta, 2016, page.30.

⁹ Article 1 point 12 of Act Number 7 of 1992 as amended into Act Number 10 of 1998 on Banking.

¹⁰ Sutarno, *Aspek-aspek Hukum Perkreditan pada Bank*, Alfabeta, Bndung, 2003, page.95-96.

¹¹ Munir Fuady, *Pengantar Hukum Bisnis*, PT Citra Aditya Bakti, Bandung, 2002, page.111.

Based on the aforementioned credit elements, a credit extension will be based on the agreement. The loan-borrowing agreement becomes the basis of reference in the credit agreement. The Civil Code (KUH civil code) does not specifically regulate credit agreements. The Civil Code only regulates the debt of borrowing money. This is regulated in Article 1756 as follows:

"The debt that is existed because of borrowing the money only consists of the amount of money stated in the agreement. If prior to settlement, an increase or decrease in price occurs or there is a change in the validity of the currency. Then, the procedure of returning a lend money must be made based on the applicable currency at repayment time. It will be calculated according to the applicable price."

According to the provisions of Article 2 paragraph (1) Decree of the Board of Directors of Bank Indonesia No. 23/69 / KEP / DIR on the Guarantee of Credit provision, it is stated that a guarantee is a bank conviction on the debtor's ability to pay off the credit as agreed. Meanwhile, according to the provisions of Article 1 point 23, collateral is an additional guarantee submitted by the debtor customer to the bank in the context of providing credit facilities or financing matters based on Syariah principles.¹² This is in line with the function of providing guarantees, convincing the bank or creditor that the debtor has the strength and ability to carry out the obligations based on the credit agreement. This belief is based on the granting rights and powers to the bank. This is to get a full payment with these collateral items. if the debtor fails to keep the promise, not paying back his debt within the specified time as stated in the agreement. The guarantee agreement must fulfill the agreement of the legal requirements stipulated in the provisions of Article 1320 of the Civil Code.

Meanwhile, credit in banking activities is considered as the main business activity. This is due to the largest income of bank business comes from credit business activities such as interest and provision. The scope of credit as a banking activity is not solely about lending money to the customers. In fact, it is very complex. It involves a large number of elements including sources of credit funds, allocation of funds, credit organization and management, credit policies, documentation and credit administration, credit supervision, and problem loan settlement. Given the wide scope and elements in regards to this lending activity, it is not excessive to say that the handling matters must be carried out very carefully and is supported by the professionalism and moral integrity that must be attached to human resources and credit officials.¹³ In providing the credit or financing matters based on Syariah principles, the banks are required to pay attention to details stipulated in Article 8 paragraph (1) and (2) of the Banking Law as follows: In extending credit or financing based on Syariah Principles, Commercial Banks are required to have confidence based on in-depth analysis of the debtor customer's intention and ability to pay off or return their debts as agreed and Commercial banks are required to have and apply guidelines of credit and financing based on Syariah Principles, in accordance with the provisions stipulated by Bank Indonesia.

In this regard, based on the explanation mentioned in Article 8 paragraph (2), the Banking Act, it is stated that the guidelines of credits and financing based on Syariah principles stipulated by Bank Indonesia must be owned and implemented in the provision of credit and financing as follows:

1. Providing credit or financing based on Syariah Principles is made in the form of a written agreement.
2. Banks must have confidence in the debtor customers' capabilities and abilities obtained based on a careful assessment of their character, abilities, collateral capital, and business projects.
3. The obligation of the bank is to formulate and implement the procedures for providing credit or financing based on Syariah principles

¹² Hermansyah, *Op. cit.*, page. 73.

¹³ *Ibid.*, page.365.

4. An obligation to provide clear information about the procedures and requirements of credit or financing based on Syariah principles.
5. The prohibition of banks is to extend the credit or financing based on Syariah principles using different requirements to debtor customers and/or affiliated parties (managers or proxies).

B. The Application of Legal Protection for House Ownership Credit Agreements based on the Ministerial Regulation Number 6 of 2011 on the Public Housing.

Banking is one source of funds in the form of credit for individuals or business entities to meet their consumption needs or to increase their production. Needs are related to productive needs such as increasing and expanding business activities. Meanwhile, consumptive interests, for instance, cover buying a house so that people can utilize funding from the bank. This is known as House Ownership Credit or abbreviated as KPR. One of the state-owned banks that has widely provided funding for the public to buy various types and prices of houses is the State Savings Bank (BTN).

This bank has established its contribution to the development of the country and the welfare of its citizens by providing House Ownership Credits. This is to fulfill one of the basic needs of an individual so that millions of Indonesians citizens have adequate and decent homes. Thus, their lives become more peaceful and prosperous.

According to Article 6 Ministerial Regulation Number 6 of 2011 on the Public Housing:

1. The submission request for subsidies payment of subsidized KPR and subsidized Syariah KPR shall be submitted to the Commitment-Making Officer (PPK) of the working unit from public housing.
2. The subsidy payment of KPR as stated in paragraph (1) shall be paid under a difference interest subsidy scheme or a down payment subsidy.
3. The difference payment of subsidies interest for subsidized KPR credit agreement issued before 2010 will be paid annually or paid at once preceded by reconciliation.
4. The difference payment of subsidies interest for subsidized KPR credit agreement issued in 2010 will be paid annually or paid at once.
5. Further provisions in regards to the application procedures of subsidized KPR and subsidized Syariah KPR shall be regulated based on the ministerial regulation.

Banking is one source of funds in the form of credit for individuals or business entities to meet their consumption needs or to increase their production. The funds used by the Bank to finance the credit do not solely come from the Bank's capital but it is mostly collected from public funds. The bank capital is very limited. Thus, in developing a business, the Bank must strive hard to attract funds from the public which then channeled back to the community. This is the so-called intermediary function by the bank.

Public funds can be withdrawn from the community such as savings, giro, deposits, certificates of deposit, bonds, and other debt securities. As the loan given by the bank is in the form of credit which comes from the public funds, it has a high risk. The credit may not be returned on time. This is known as a Non-Performing Loan (NPL). This can disrupt the Bank's liquidity.

Therefore, the Bank must be able to manage the given credit with good credit management, uphold the principle of prudence, conduct in-depth analysis in all aspects. All of These aspects are to reduce the risk of problem credit to a minimum.¹⁴ One aspect concerning on the credit granted is the legal aspect. Legal aspects play an important role in doing analysis before the credit granted to the applicant. There are several legal aspects related to credit granted such as the legal aspects of the applicant, the legal aspects of the credit agreement, the legal aspects of credit guarantees, the legal aspects of credit restructuring, and the legal aspects of legal action in saving and resolving bad credit.

¹⁴ Sutarno,SH.,MM. *Aspek-Aspek Hukum Perkreditan Pada Bank*. Jakarta, page 4-5.

The legal aspects of credit applicants. In general, credit applicants are individuals or humans and legal and non-legal business entities. Humans and business entities with legal status are legal subjects. A credit analyst and an officer working in the credit unit must be able to understand the ins and outs of the credit applicant's legal aspects. The legal aspect analysis on the credit applicant must first be done before granting credit. The key component of human legal aspects and the legal entities such as Limited Liability Companies, Cooperatives, and non-legal business entities such as Firma, CV, must be comprehended perfectly. If the credit applicant's understanding of this legal aspect is wrong, the credit agreement has been made null and void or canceled. This can cause a disadvantage to the Bank as the credit provider. After a thorough study and analysis of the applicant's legal aspects and if other aspects also meet the bank requirements, the bank will approve the credit. However, before the credit is disbursed to the applicants, the legal aspect must be properly analyzed and understood by credit officers. In this case, they prepare a credit agreement. There are many legal aspects of a credit agreement. The general analysis must be able to provide the scope of the credit agreement, understand the importance of a credit agreement, and know the way to provide credit.

In particular, the analysts must understand the use of a credit agreement in the first place. Secondly, they must be able to prepare, compile, and make a strong credit agreement to secure the interests of the Bank. Thirdly, they must be able to apply and make changes if there is an adjustment from the bank regarding the credit terms. Fourthly, the credit agreement is a master / principal agreement and as a tool or means to monitor the credit facilities that have been given to the credit applicant. For this needs, the analyst must understand the agreement principles, the legal parties signing the credit agreement, the legal terms of the credit agreement, the legal basis for the credit agreement, the composition of the credit agreement, the terms of credit disbursement, the terms of credit repayment, in what case the debtor is considered to breach the promise (*wanprestasi*) and be able to distinguish the main definition and purpose of credit agreements and debt acknowledgments and so on.

A credit agreement is a principal or master agreement that regulates the rights and obligations between creditor and debtor. The creditor has to disburse the loan based on the approved amount. Meanwhile, the debtor has to repay the loan within a specified time stated in the credit agreement. The money loan that has been disbursed to the debtor has risks, such as unable to repay the principal and the interest on time or not at all due to some reasons. Even though he has been given relief and ease to repay the loan. To guarantee the repayment of the debt given, the creditor gives a term to the debtor to provide and to give a so-called collateral, a movable or immovable object. This is to give the debtor the right and power to get a full repayment by selling/auctioning the goods as stated in the agreement.¹⁵ Practically, a credit agreement form and material are different between one bank and another. This is adjusted based on their respective needs. The credit agreement does not have a generally accepted form, it is just that in practice, it usually includes definitions of terms. This is used in the agreement, used to determine the amount and the time limitation of loan, and for handling negligent debtors. All of these things are then standardized to finally form a standard for a credit agreement. In a standard agreement, a balance between the parties is required. Clauses should not be placed or the form should not be difficult to see, uneasy to read, or difficult to comprehend.¹⁶ Hermansyah further cited Thomas Suyatno's opinion, the elements of credit mentioned as follows:¹⁷

1. Trust, the creditor believes that the granted achievement such as money, goods, or services will actually come back within a certain time in the future

¹⁵ Interview, Favouronis, Admin Kredit Bank BTN, Bank BTN Kuningan Regency, on June 2, 2020.

¹⁶ Muhamad Djumhana, *Hukum Perbankan di Indonesia*, Citra Aditya Bakti, Bandung, 2000, page.387.

¹⁷ Hermansyah, *Op.cit.*,page.58-59.

2. The grace period, the time to separate the awarding and the contrast achievements received in the future. This time element covers the understanding of the agio value of money, the existing money is higher in value than the money received in the future.
3. Degree of risk, the level of risk faced as a result of the time period existence that separates the award and the contrast achievements received later. The longer the credit is given the higher the risk will be. The further human's ability to break the future, the more element of uncertainty be accountable. This is what causes an element of risk. This element creates collateral of credit provision.
4. The achievement or credit object is not only given in the form of money, but also in the form of goods or services. However, as nowadays modern economic life is based on money, thus, we often found credit transaction involving money in practice

Thus, the essential element of bank credit is the bank trust as a creditor to customer borrowing as a debtor. This trust arises because the debtor has fulfilled all the terms and conditions for obtaining bank credit, such as the clear purpose of credit allocation and the existence of collateral objects. In addition, the credit application and its provision also consist of other elements such as the element of time, the element of risk, and the element of achievement.¹⁸ In connection with this risk element, the credit provided by banks to debtors also contains business risks for the bank. The risk refers to the possible risk of the debtor's inability to pay the installments or to pay off his credit due to certain undesirable things. Therefore, the longer the period or the grace period is given for credit repayment, the greater the risk the bank faced.¹⁹

The five of credit or 5C covers the character (personality), the character assessment or the prospective debtor character; the capacity, the prediction of the debtor's business ability and performance to pay off his debt; the capital, research on the debtor's financial capacity which has a direct correlation to the payment level of creditors' ability; the condition of economy, an analysis of the debtor's economic conditions, micro and macro and collateral. Collateral is the debtor's assets for debts repayment once the credit is in bad condition.²⁰ The application of the precautionary principle basically aims to minimize the possible risks, to maintain an efficient, healthy, and fair bank conditions, and are able to properly protect the funds collected by banks in the community. Various risks of providing loans may result in the debt unrepayment within the agreed time. Considering the fact that the bank source comes from public funds, this can definitely affect the bank liquidity and the repayment of public funds. For the bank, credit activity is a risk asset because bank assets are controlled by parties outside the bank, the debtors. However, there is always a risk of credit not returning on time. This is called as non-performing loans.²¹ There are many risks causing a problematic or bad credit. The risks may come from the bank's internal parties or the external risks coming from the debtors or the public. These risks are caused by the occurrence of an economic crisis, bankruptcy, business competition that made the debtor's or banking business activities not run smoothly, or the debtor's intention of making irregularities in the use of extended credit.

Credit granted based on the prudential principle such as implementing the aforementioned 5C. This is expected to place the credit on good quality or performing loans. This good credit quality is expected to provide a large income for the bank and provide good liquidity. Thus, the public funds stored in the bank are also safe. Every approved and agreeable credit by the creditor and the debtor must be stated in a written credit agreement (contract). In banking practice, credit agreement forms and formats are fully submitted to the concerned bank.

¹⁸ *Ibid*

¹⁹ *Ibid*

²⁰ Munir Fuady, *Hukum Perkreditan Kontemporer*, PT Citra Aitya Bakti, Bandung, 2002, page.21.

²¹ Sutarno, *Aspek-aspek Hukum Perkreditan pada Bank*, Alfabeta, Jakarta, 2003, page., 263.

An agreement is an event between 2 (two) people or parties who mutually promise to do something or an agreement made by 2 (two) or more parties, each party agrees to obey what is stated in the agreement. A credit agreement is a principal agreement that is real in nature. The guarantee agreement is the assessor of the principal agreement. The existence and expiration of the guarantee agreement depend on the main agreement. Meanwhile, the real meaning is the credit agreement determined by the bank is handing the money to the debtor customer through the House Ownership Credit known as KPR. In this case, the customer buys a house from the developer on cash. The money, however, comes from the bank. The credit agreement does not have a generally accepted form, it is just that in practice, it usually includes definitions of terms. This is used in the agreement, used to determine the amount and the time limitation of loan, loan repayments, interest and penalties for negligent debtors. All of these things are then standardized to finally form a standard for a credit agreement. In a standard agreement, a balance between the parties is required. Clauses should not be placed or the form should not be difficult to see, uneasy to read, or difficult to comprehend.²² Credit agreements must be considered by banks as creditors and by customers as debtors. Credit agreements plays a very important role of granting, managing, and implementing the credit itself. A credit agreement has several functions: (1) As principal agreement, a credit agreement is something that determines the cancellation or non-cancellation of other following agreement. For example, a guarantee binding agreement; (2) As evidence regarding the limitations of rights and obligations between creditors and debtors; and (3) As a tool for credit monitoring.²³

As previously explained, the existence of collateral in a bank credit agreement is extremely important. It serves as the legal protection for bank security in overcoming the risks. This is to make sure that the debtor customer repays the loan. The existence of this collateral agreement is highly important especially when the credit distributed by the bank to the public is not paid back. For instance, the debtor does not pay to the bank on time as stated in the credit agreement covering the principal and the interest. This can make distributed credit become problematic. In the end, the bank must execute or sell the credit collateral to get back the payment of the creditor's debt (credit).

CONCLUSION

Referring to the above-mentioned finding and explanation, the researchers provide the following conclusions: The provisions stipulated in the ministerial regulation number 6 of 2011 on the public housing state that the procurement of housing and settlements was supported by the housing and financial aid in the form of housing subsidies through credits/homeownership financing. In addition, it is also required to submit collateral in each application of a mortgage agreement with the bank. This collateral provides an assurance to the bank that the credit granted to the customers returns according to mutually agreed terms. In addition, it is also to minimize the possible risk involved and arise in any credit disbursement. Meanwhile, in terms of providing credits to prospective debtors, the bank must have confidence in the debtors' ability or capability to repay the loan. In conclusion, credit is a loan-borrowing agreement between the bank and the other party that requires the borrower to pay off his debt with the amount of interest, compensation, or profit-sharing within a certain period of time. Besides, in the implementation of legal aspects for credit applicants, a general homeownership credit applicant is an individual or human who is not a legal entity. Humans who have not legally incorporated are legal subjects. Thus, a credit analyst and an authorized officer who work in a credit unit must be able to fully understand the ins and outs of the credit applicant's legal aspects. Firstly, before granting the credit, there should be an analysis of the legal aspect of the credit applicant. After a thorough study and analysis of the applicant's legal aspects and if the other aspects are deemed to

²² Muhamad Djumhana, *Op. cit.*, page.387.

²³ Ch, Gatot Wardoyo in Muhamad Djumhana, *Op., cit.*,page.388.

meet the bank requirement, the bank will approve the credit provision. However, before the credit disbursed to the applicants, the credit officers must properly analyze and understand the legal aspect. In this case, they prepare a credit agreement.

SUGGESTION

Based on above-mentioned description, the researchers propose suggestions as follows: there must be a home certificate guarantee in making a house ownership credit agreement. The certificate serves as the debtor's guarantee to pay the credit based on the agreeable time between the debtor and the creditor. This guarantee is a bank's conviction in the debtor's ability to pay off the credit as agreed. This is in line with the function of providing guarantees, convincing the bank or creditor that the debtor has the strength and ability to carry out the obligations based on the credit agreement. This belief is based on the granting rights and powers to the bank. This is to get a full payment with these collateral items. if the debtor fails to keep the promise, not paying back his debt within the specified time as stated in the agreement. The guarantee agreement must fulfill the agreement of the legal requirements stipulated in the provisions of Article 1320 of the Civil Code. In extending credit, a Bank is required to have confidence based on an in-depth analysis of the debtor's intention and ability to pay off or return their debts as agreed. Credit must be made in a written agreement. In addition, banks must also have confidence in the debtor customers' abilities and capabilities. This can be obtained from a careful assessment of the customers' character, capabilities, collateral capital, and business projects.

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